COMMITTEE REPORT NO. 11 14 (5) TABLED ON OCT 25 2002

# Northwest Territories Legislative Assembly

# Standing Committee on Accountability and Oversight

Report on the Review of Tabled Document 64-14(5): "Report to the Legislative Assembly of the Northwest Territories on Termination Compensation to Two Senior Officials" by the Auditor General of Canada

Chair: Mr. Charles Dent

103-04215/

Northwest Territories Legislative Assembly
Standing Committee on Accountability and Oversight

October 25, 2002

HON. ANTHONY (TONY) WHITFORD
SPEAKER OF THE LEGISLATIVE ASSEMBLY

Dear Mr. Speaker:

The Standing Committee on Accountability and Oversight wishes to provide it's Report on the Review of Tabled Document 64-14(5): "Report to the Legislative Assembly of the Northwest Territories on Termination Compensation to Two Senior Officials" by the Auditor General of Canada, and commends it to the House.

This is a majority report of the Committee. However, appendixed are two minority dissenting opinions.

Sincerely,

Charles Dent
Chairman

P.O. Box 1320
Yellowknife
Northwest Territories
X1A 2L9
T: (867) 669-2299
F: (867) 873-0432
www.assembly.gov.nt.ca

## MEMBERS OF THE STANDING COMMITTEE ON ACCOUNTABILITY AND OVERSIGHT

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### MEMBERSHIP

Charles Dent
MLA Frame Lake
Chair

Floyd Roland
MLA Inuvik Boot Lake
Deputy Chair

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| Brendan Bell<br>MLA Yellowknife South | Bill Braden<br>MLA Great Slave | Paul Delorey<br>MLA Hay River North |
| Jane Groenewegen<br>MLA Hay River South | David Krutko<br>MLA Mackenzie Delta | Leon Lafferty<br>MLA North Slave |
| Sandy Lee<br>MLA Range Lake | Michael McLeod<br>MLA Deh Cho | Steve Nitah<br>MLA Tu Nedhe |

### STAFF MEMBERS

Doug Schauerte
Deputy Clerk

Colette Langlois
Director, Research Services

### SCHEDULE OF WITNESSES

Ms. Sheila Fraser, FCA
Auditor General of Canada

Jean Ste-Marie
Office of the Auditor General

Neil Papineau
Office of the Auditor General

## Report on the Auditor General's Report on Termination Compensation to Two Senior Officials

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The Standing Committee on Accountability and Oversight wishes to report on its review of the Auditor General's Report to the Legislative Assembly of the Northwest Territories on Termination Compensation to Two Senior Officials. The Report was tabled in this Assembly and referred to the Committee on October 23rd, 2002.

This report represents the views of the majority of the Committee. Appended hereto are the Minority Reports of two Members.

Members requested this special audit in March of this year because they were not satisfied that all of the information surrounding the circumstances of the termination agreements of the former Principal Secretary to Cabinet and Chief of Staff was being made available to them.

The Committee has considered the Report, and met with the Auditor General to discuss it further in a public meeting on October 24, 2002. The transcript from that meeting is attached as an appendix to this report. The Committee agrees with the Auditor General's findings. The audit has confirmed that the terms of the termination agreements were without justification. The staff of the Auditor General have confirmed that those terms were set in place at the direction of the Premier.

**The Committee recommends that: the Legislative Assembly accept the Auditor General's conclusion that the Government did not handle the matter reasonably and with prudence.**

**The Committee further recommends that in light of these findings, the Premier submit his resignation forthwith as Premier and Member of the Executive Council.**

# APPENDIX A

# Northwest Territories Legislative Assembly

# Standing Committee on Accountability and Oversight

## Public Hearing on the Auditor General's Report on Termination Compensation to Two Senior Officials

October 24, 2002

**Standing Committee on Accountability and Oversight**

**Chairman:**

Mr. Charles Dent, MLA for Frame Lake

**Deputy Chair:**

Mr. Floyd Roland, MLA for Inuvik Boot Lake

**Members:**

Mr. Brendan Bell
MLA for Yellowknife South

Mr. Bill Braden
MLA for Great Slave

Mr. Paul Delorey
MLA for Hay River North

Mrs. Jane Groenewegen
MLA for Hay River South

Mr. David Krutko
MLA for Mackenzie Delta

Mr. Leon Lafferty
MLA for North Slave

Ms. Sandy Lee
MLA for Range Lake

Mr. Michael McLeod
MLA for Deh Cho

Mr. Steven Nitah
MLA for Tu Nedhe

**Committee Staff:**

Doug Schauerte, Deputy Clerk

Colette Langlois, Director, Research Services

**Witnesses**

Sheila Fraser, Auditor General of Canada

Jean Ste-Marie, Assistant Auditor General

Neil Papineau, Audit Director

**STANDING COMMITTEE ON ACCOUNTABILITY AND OVERSIGHT**

**Auditor General's Report on Termination Compensation to Two Senior Officials**

**Thursday, October 24, 2002**

**Yellowknife, Northwest Territories**

**10:30 a.m.**

**CHAIRMAN (Mr. Dent):** I call the Standing Committee on Accountability and Oversight to order. We are here today to meet with the Auditor General for Canada to review her report to the Assembly on Termination and Compensation to Two Senior Officials which was tabled yesterday. Ms. Fraser, welcome to our committee. We are looking forward to our meeting with you.

Welcome also to Mr. Papineau, and Mr. Ste. Marie who join you at the witness table. Ms. Fraser, perhaps if you have any opening comments you could begin with those please.

**MS. FRASER:** Thank you, Mr. Chairman. We thank you for giving us the opportunity today to speak to you about our audit of termination compensation to two senior officials of the government. As you are aware, the Legislative Assembly of the Northwest Territories asked me in March of 2002 to undertake this audit. As you have mentioned, I have with me today Jean Ste. Marie who is an assistant auditor general and Neil Papineau, a director who was responsible for this audit.

The audit set out to examine the process by which that termination payments and benefits were determined and approved. We also sought to determine whether government policies and practices were followed and whether the termination compensation was in accordance with the terms of the government's employment agreements with the two officials.

The cost to the government to terminate the employment of John Bayly, principal secretary, and Lynda Sorensen, chief of staff, was about $680,000 of which around $280,000 of that for Mr. Bayly and around $400,000 for Ms. Sorensen.

By our calculations, the termination compensation to both individuals is over and above what has been set out in their employment agreements and government policies. The additional compensation paid by the government is about $6,000 for Mr. Bayly and about $250,000 for Ms. Sorensen. We found no justification for this additional compensation.

The government entered into a separate employment agreement with each employee in the year 2000, when both were appointed to their "at pleasure" positions. These employment agreements had specific clauses about how the agreements could be

terminated, and the agreements clearly set out how severance amounts would be calculated.

In October 2001, when the government commenced the action to terminate their employment, it undertook discussions and negotiations with the two employees and subsequently entered into separate termination agreements with each in November of 2001. These termination agreements set out new terms for the termination of both employees, providing them with higher compensation and extended benefits than those set out in their employment agreements of 2000.

The termination agreement between the government and Mr. Bayly states that he tenders his resignation in one year, on October 28, 2002. This agreement effectively continues Mr. Bayly's status as an employee of the GNWT for one more year, to October 2002. During this one-year period, the government will continue to pay to Mr. Bayly his current salary and full employee benefits. As a result of a 1999 policy of the GNWT, Mr. Bayly as a deputy minister is permitted to extend his employment using his severance pay.

The termination agreement between the government and Ms. Sorensen states that Sorensen tenders her resignation in two years, on January 4, 2004. This agreement effectively continues her status as an employee of the government for two more years, to January 2004. During this two-year period, the government will continue to pay Ms. Sorensen her current salary and full employee benefits. This is not permitted under the GNWT 1999 policy or any other policy of the GNWT; Sorensen as a management employee did not meet the requirements of the policy; that is, she was not laid off, nor was she terminated for health reasons.

As a result of the extension of employment, Mr. Bayly will receive a pension, which he would not normally have qualified for as he did not have the minimum two years of employment. Ms. Sorensen will receive substantially more in her pension then she would otherwise have collected.

Both employees received the maximum performance pay even though a letter of reprimand was in the employment file of each, and we found no justification to support the maximum performance pay award. The GNWT paid Mr. Bayly about $25,000 and Ms. Sorensen about $20,000 as performance pay.

Also, the government gave each employee a removal assistance payment of $6,000 without ensuring that each met the policy requirements of relocating and providing receipts for their relocation costs.

Our audit determined that the termination compensation to the two officials exceed what had been set out in their employment agreements and was not compliant with the government's policies. Further, we found no justification for paying the significantly higher termination payments and benefits. Therefore, we conclude that the Government of the Northwest Territories did not handle the matter reasonably and with prudence.

That concludes my opening remarks, Mr. Chairman, I would be pleased to answer any questions the committee may have.

**CHAIRMAN (Mr. Dent):** Thank you, Ms. Fraser. Do members of the committee have any questions they would care to pose to Ms. Fraser on her opening comments or on the report itself which was tabled in the House yesterday? Mr. Roland.

**MR. ROLAND:** Thank you, Mr. Chairman. I thank the Auditor General of Canada for coming up here to the Northwest Territories and providing this report. As members are aware, this was action taken because we felt that we were not able to get responses from our government during questioning in the House and that this was the only other avenue that would bring some satisfaction to members and provide some information.

As I see it in the report, it is straightforward, laid out, and compared to policy of this government. I do have a couple of questions around some of the information here. On page 4 of the report under observations, paragraph 11, the last portion of that, you were informed the terms of the termination agreements with Sorensen and Bayly were negotiated by Elizabeth Snider and approved by Mr. Kakfwi.

There were some questions in the House around this issue of signing off termination agreements. We were informed in the House that Ms. Snider signed off on Mr. Bayly's but did not sign off on Ms. Sorensen. We could not get too much information beyond that and I guess a question of mine still lingers out there, in your review of this, did you find in policy that this would be normal action done where the Premier himself would sign a negotiated termination agreement.

**CHAIRMAN (Mr. Dent):** Ms. Fraser.

**MS. FRASER:** Thank you, Mr. Chairman. The member is correct in indicating, as we indicate in our report, that the Premier signed one of the contracts and the secretary to Cabinet signed another. I understand that we did look at other termination agreements which had been signed in the past by the government and none of those had been approved previously by the Premier. I believe that is correct.

They had been signed by previous Premiers, sorry, so this is not an unusual occurrence.

**CHAIRMAN (Mr. Dent):** Mr. Delorey.

**MR. DELOREY:** Thank you, Mr. Chairman. I also would like to thank the Auditor General of Canada for doing this for us and coming up here to present a report. When this report was being put forward, did your office receive legal documentation that Cabinet or government had obtained at any time related to some of these issues, and were those opinions or legal opinions taken into consideration in the make up of your report?

**CHAIRMAN (Mr. Dent):** Ms. Fraser.

**MS. FRASER:** Thank you, Mr. Chairman. In fact I received a letter dated October 15th which was last week advising me of two legal opinions which had been provided to the government. This was received in our office I think on the 16th. As you can appreciate by then when the report was concluded we did look at the legal opinions which were provided to us and I have legal advice and we did not change our report and we stand by our report in spite of the legal opinions which government has provided to us.

**CHAIRMAN (Mr. Dent):** Mr. Delorey.

**MR. DELOREY:** So I guess I can take that to mean that there was nothing in those legal opinions received that would give you any cause to change your report or change your mind on any of your findings that are included in your report.

**CHAIRMAN (Mr. Dent):** Ms. Fraser.

**MS. FRASER:** Thank you, Mr. Chairman. That is correct. In fact if I may, I would like to express concern that we have with the legal opinions. When we read the legal opinions we have issue with the facts. There are references made to certain clauses in the contract, and the termination agreement which was given to us do not contain those clauses. We question the facts upon which those legal opinions were based. I would be glad if the committee would like to have our legal opinion. I don't know that we really want to get into an issue of legal opinions, here, but we would certainly be willing to provide our legal analysis to the committee should they so wish.

**CHAIRMAN (Mr. Dent):** Thank you, maybe we will consider that. I know there is always an issue of privilege and we are going to have to be cautious about some of the ground that we might be getting into. Mr. Delorey.

**MR. DELOREY:** Thank you, Mr. Chairman. My reason for questioning a little more is if they had looked at these legal opinions and taken them into consideration in their report? One of the things I would just like to get a little more comment on is your findings into the classification of Ms. Sorensen's employment as far as a management employee or a deputy minister's position. Have you looked at that and how you arrived at your findings in that regard?

**CHAIRMAN (Mr. Dent):** Ms. Fraser.

**MS. FRASER:** Thank you, Mr. Chairman. In our interpretation, Ms. Sorensen was not a deputy minister. The only references in the termination agreement which refer to her being a deputy minister is in relation to pay levels. There is no other reference to that, so it appeared to us that she was a management employee, and then of course the government policies applying to management employees would then apply. There are several differences in the benefits that can be given to a management employee versus a deputy minister -- things like being able to extend the severance pay over a longer period of time, the amount of severance pay and things like that vary depending on whether you are a management employee or a deputy minister.

**CHAIRMAN (Mr. Dent):** Mr. Nitah.

**MR. NITAH:** Thank you, Mr. Chairman. Ms. Fraser, I welcome you to the Northwest Territories, along with your staff. Thank you for coming and providing us with this report. The question I have is on Ms. Sorensen's termination agreement. The argument used seems to be that she served 17 years with the Government of the Northwest Territories, 15 of which were outside the employment contract that she was under when she negotiated the termination agreement. If she were to receive benefits based on the two years instead of the 15, would she have received a pension for the 15 years she served prior to become chief of staff for the Premier? If so, what would the difference be in the benefits if you separated the two years from the 15 and got the pension that way?

**CHAIRMAN (Mr. Dent):** Ms. Fraser.

**MS. FRASER:** Thank you, Mr. Chairman. I would like to mention a couple of elements in response. The pension -- she would of course receive a pension based on her service with the government so it is not two years, 15 or 17 years -- she will receive a pension based on her whole time of service. That will not be affected. What is affected in the pension is the fact that her employment continues for two additional years and so the pension will be much higher because of those two additional years of service at a higher rate of pay than two years in her former position. That is where the difference is in the pension.

The difference with the severance pay -- we maintain that in this contract it is only the time of service in that position which should be considered, and would then allow her to have a severance of a minimum of 12 months. As we mention in the report, even if one accepts the argument that it is the 17 years of service that would give a severance allowance of 17 months, not 24 months.

Finally, I guess the one argument that was kind of convincing to me is that in the former position the severance pay was not a month-per-year of services, it was much less than that, so even after 15 years of service Ms. Sorensen would not have earned 12 months severance. So even 12 months severance was more generous than what she would have had previously. She is not being disadvantaged, if you will, by having a 12 months severance pay, if we look at the normal calculations for her previous service.

We maintain that it was the time of service in that position, which was two years, which would have entitled her to 12 months severance pay. The question, of course, is that there was no justification for the additional amount paid.

**CHAIRMAN (Mr. Dent):** Mr. Nitah.

**MR. NITAH:** Thank you, Mr. Chairman. Clearly policy was not respected in that area. The one area I have a question on is the clause in her termination agreement that states that if the government was going to not pay her, that her legal fees in trying to obtain that payment that was agreed to in the employment contract, would be covered by the government. Was that in her original employment contract, or was that only in the termination agreement?

**CHAIRMAN (Mr. Dent):** Ms. Fraser.

**MS. FRASER:** Mr. Chairman, no that was not in her original employment contract. I would add that we understand that this came about through the process of negotiation and discussion. I would also add that in the other termination agreements which we looked at from previous cases there was no such clause in those contracts either. This was not, I guess, usual practice to have a clause such as that. We were informed that it came about because of the negotiations and discussions.

**CHAIRMAN (Mr. Dent):** Mr. Nitah.

**MR. NITAH:** Thank you, Mr. Chairman. The two termination agreements seem at odds. The report indicates that they were negotiated from the government side by the same individual, but the individual did not want to sign the other termination agreement. Was it actually negotiated by Ms. Snider on both termination agreements?

**CHAIRMAN (Mr. Dent):** Ms. Fraser.

**MS. FRASER:** We were informed that Ms. Snider did negotiate those agreements and that the Premier was aware of the negotiations. I obviously wasn't there when it happened, but we were informed by her that she negotiated the agreements.

**CHAIRMAN (Mr. Dent):** Ms. Lee.

**MS. LEE:** Thank you, Mr. Chairman. Mr. Chairman, I would also like to thank the Auditor General for making a long trip here to visit us here in Yellowknife, along with her staff. I too have some questions on the opening statement that the Auditor General made and specifically under paragraph 8 where she speaks about the termination agreements and the number of months Ms. Sorensen was given. It has a provision there that had she been laid off, her entitlement or compensation might have been different. I think this is a point of difference between what the government is saying and the findings of the Auditor General's office. I am just wondering if her officials were given any information to indicate that her position was eliminated following discussions in the House, and that her position does not exist in the organizational chart any more.

This might constitute a lay-off or a constructive dismissal, but when there were discussions about what possible options there might have been for Ms. Sorensen, it was indicated by one of the Cabinet Ministers, whoever, that it was not possible for her to continue her employment any more. Is it in the purview of the Auditor General's office to look at something like that, or did the officials find anything that might have indicated that she might have been laid off and it was constructive dismissal?

**CHAIRMAN (Mr. Dent):** Ms. Fraser.

**MS. FRASER:** Thank you, Mr. Chairman. We take the position that Ms. Sorensen did not qualify for that provision of the policy, that she was not laid off because the position was actually eliminated after her employment was terminated. There is a time lag, so it was not as if the position was eliminated and then employment terminated. Employment was terminated and then the position was eliminated subsequently. The real reason for

her dismissal was not because the position was being eliminated. Her employment was being terminated.

**CHAIRMAN (Mr. Dent):** Ms. Lee.

**MS. LEE:** Thank you, Mr. Chairman. I guess that is an important thing in that it seems to change the level of benefits or the degree of benefits. I do not have the dates but I understand there was a Cabinet direction that terminated the position and she initiated her employment contract afterwards. I do not think we have any information here to go to that and maybe that is something that the committee can look into afterwards.

I have another question and it has to do with the fact that it is another difference of interpretation. The auditor general's finding is that Ms. Sorensen was given many more months than she was entitled to. I just attended a government conference and their position was there were extenuating circumstances that might have subjected this whole case under judicial scrutiny and the officials that were negotiating these termination agreements were under somewhat of a pressure of potential litigation.

I am wondering if your staff or anybody took into consideration that this might have been an element that came into play when the termination agreements were agreed to and that might have affected the outcome. Thank you.

**CHAIRMAN (Mr. Dent):** Ms. Fraser.

**MS. FRASER:** As mentioned, and we do mention it in the report that that was one of the elements that was given to us that there was a fear that there could be some legal action taken. What concerns us and continues to concern us is that that rationale was never documented. If there was fear of legal action there were no legal opinions. The only legal opinions that we have seen, quite frankly, are the ones that were produced last week.

So if there was concern about legal action I do not think it is unreasonable to expect that there would have been legal advice given before the termination agreements were signed. As well, if there were additional compensation paid that the justification and the rationale for that be in the files.

That is our main concern here.

**CHAIRMAN (Mr. Dent):** Ms. Lee.

**MS. LEE:** Could I understand that to mean that possible potential for litigation would have been a factor but the problem that your office is having is that that was not documented, but the presence of it could have affected the outcome?

**CHAIRMAN (Mr. Dent):** Ms. Fraser.

**MS. FRASER:** It is hard for me to evaluate that at this point in time, that is speculation. What happened was that a termination agreement was not consistent with the terms of

an employment contract which had been signed not that long before and that there was no rationale and no justification for not doing it.

Now, could that have been a factor? Perhaps, but that was not justified anywhere in any documentation in the file. There were no legal opinions given until just recently so I cannot really speculate as to whether that would be sufficient justification for the additional payments made.

**CHAIRMAN (Mr. Dent):** Just a point of clarification. In one of your answers to Ms. Lee you indicated that the time for the agreement with Ms. Sorensen and the elimination of the position was such that the position was eliminated after the termination. Members were told in the House on March 11th of this year that the position, well I will quote from Hansard:

Mr. Handley told the House that "it was on October 29th that the decision was made to eliminate the chief of staff position. On November 1st it was announced that the incumbent was resigning." Clearly the government is of the opinion that the position was eliminated before the termination agreement. Maybe we can just get that clarified with your staff now.

**MS. FRASER:** Thank you, Mr. Chairman. I have just been told that there is no formal record of decision as to when the position was eliminated. I can perhaps ask my colleague, Mr. Papineau to provide you with additional information as to -- we were trying to as well to establish the dates.

**CHAIRMAN (Mr. Dent):** Mr. Papineau.

**MR. PAPINEAU:** I specifically requested records of decision or information showing whether the position was eliminated and at what date and time. I was told that there was no record of decision and I was given a formal letter stating that there was no record of decision as to the elimination of that position.

Also I was told that the only record that I could see that would show that the position was eliminated was that in the new fiscal year, on the flow chart of the organization, her position no longer appears. That took place four months later.

**CHAIRMAN (Mr. Dent):** Thank you. Mr. Krutko.

**MR. KRUTKO:** I would also like to welcome the auditor general and her staff. My question is in regard to the area of approval of compensation for staff. In most cases, say a Minister has staff under them, but usually the process is that the staff is reviewed in most cases by the principal secretary, because you are employed under the Minister in regard to staff.

Have you looked into that precedent where in this case the Premier signed a contract of his employee in regard to Ms. Sorensen? I would like to ask the auditor general, did you look into that sort of precedent that has taken place in which most cases the Premier

would sign off for deputy ministers and whatnot who are responsible for a particular department. In this case it was a staff of the Premier.

**CHAIRMAN (Mr. Dent):** Ms. Fraser.

**MS. FRASER:** Thank you, Mr. Chairman. We did look at other employment contracts and other termination agreements and we did find cases in the past where Premiers have signed both agreements so this would not appear to be an unusual practice per se and the Premier of course has full right to sign any agreement with an employee such as this.

**CHAIRMAN (Mr. Dent):** Mr. Krutko.

**MR. KRUTKO:** I have another question. With the agreement that was signed between the parties, apparently there is a provision in there that we as a government will be held liable for any legal costs and the enforcement of the agreement. My view is, as a government we are responsible for protecting the public interest and in this case, in most contracts, there is an opting out clause which allows for the parties to look at other -- if you cannot agree to all the elements to protect government we have a clause that protects us from legal challenges and whatnot.

In this case it seems like we have a contract we are bound to regardless if we as Members of the Legislative Assembly or other people think otherwise, that it doesn't matter. I would like to know, on that, did you look into those contracts knowing we are legally bound by a contract with no opting out clause?

**CHAIRMAN (Mr. Dent):** Ms. Fraser.

**MS. FRASER:** Thank you, Mr. Chairman. I am not a lawyer and I would not pretend to be a lawyer. That is really a question of legal interpretation as to whether these contracts are binding. My suspicion as a lay person is yes, but I think you will have to get your own legal advice on that.

I would just mention, as I mentioned earlier, that that clause was not usual practice in other termination agreements that we had seen from the past.

**CHAIRMAN (Mr. Dent):** Mr. Bell.

**MR. BELL:** Thank you, Mr. Chairman. I have a question about the nature of at pleasure appointments, at pleasure positions. The government I think has been trying to make the case that we had to not only pay what was due to the former chief of staff in her contract, we had to go over and above that and pay extra money on top because we felt there might be some legal liability.

As you have indicated, they did not have a legal opinion that you can find or anything to reference this, so I guess my question is, if we know that these were at pleasure appointments and we have seen that in their contract and as you say, that type of employment may be terminated by the employer at any time with or without cause, can

you even imagine a scenario where there is legal liability here that the government could have been worried about?

**CHAIRMAN (Mr. Dent):** Ms. Fraser.

**MS. FRASER:** Again, Mr. Chairman, that is a legal question and I will not purport to be a lawyer. As we mentioned, employment can be terminated with or without cause and the severance provisions were laid out in the employment contract. Should the employment be terminated, even without cause, the provisions were there as to how the separation payments would be made.

**CHAIRMAN (Mr. Dent):** Mr. Bell.

**MR. BELL:** Let me ask you about the amounts of the severance, and we know that this month-per-year of service provision was used. In your experience and looking at other agreements, when we realized that the last year of pay at the chief of staff level was then taken and used all the way back in years of service, is that normal or do these situations tend to take an average amount of pay or some other such thing, other than the highest last year of pay?

**CHAIRMAN (Mr. Dent):** Ms. Fraser.

**MS. FRASER:** Again I am not an expert on what might occur generally in these kinds of contracts, but the Government of the Northwest Territories generally has paid one month of separation for each year of service in that position so in the other cases that we looked at it would have been one months pay for each year of service in that particular position, not considering previous service.

**CHAIRMAN (Mr. Dent):** Mr. Bell.

**MR. BELL:** Okay, if I could use an example to help me understand this. In our government if I had been a secretary for 10 years and a deputy minister for two years, we would not be talking about giving me deputy minister pay in severance for all those years as a secretary, typically, the way the GNWT adheres to these termination contracts.

**CHAIRMAN (Mr. Dent):** Ms. Fraser.

**MS. FRASER:** Thank you, Mr. Chairman. The contract specifies a minimum separation pay, so it would have been one month of service as a deputy minister, with a minimum of 12 months. If someone had been in the position for one, two or three years, there would have been a minimum one year of separation pay.

**CHAIRMAN (Mr. Dent):** You said earlier, Ms. Fraser, that there is difference between deputy minister contracts though and those found with other government employees. What did you find that was the standard for government employees not at the deputy minister level on termination?

**MS. FRASER:** One of the main differences, Mr. Chairman -- and I will ask Mr. Papineau to explain some of the others -- is the ability to extend employment for the term of the separation. If it was one years separation pay, that person could stay on as an employee on the payroll, if you will, and get salary and benefits for the year rather than having an immediate payment. I will ask Mr. Papineau as well to describe the differences in the amounts.

**CHAIRMAN (Mr. Dent):** Mr. Papineau.

**MR. PAPINEAU:** Mr. Chairman, the benefits for those at the management level for severance are in their manager's handbook, and it states in the GNWT handbook that they get two weeks of severance for each year of service up to the first 10 years and three weeks of severance for each additional year up to a maximum -- I am not sure of the exact maximum but I think it is 42 weeks. It's less than a full year. They have put in a maximum as to how much. In this case with Ms. Sorensen, she would have had 15 years and she would have received 35 weeks severance, that is what she would have received for severance.

The other difference between a deputy minister and a management employee is the value of some of the benefits, and I didn't go into the specifics of the values but I guess the life insurance and everything else is a little more generous than at the management level.

**CHAIRMAN (Mr. Dent):** Thank you. Mr. Lafferty.

**MR. LAFFERTY:** Thank you, Mr. Chairman. In the news release, paragraph three from the bottom - it says that the termination arrangements differed from those in the employment agreements without justification. This is the area where they went into the new agreement. Is it normal practice for governments or large firms or employers to go into new agreements of this kind -- a separate agreement for termination after being terminated? Thank you.

**CHAIRMAN (Mr. Dent):** Ms. Fraser.

**MS. FRASER:** Thank you, Mr. Chairman. I would say that general practice would be to respect the terms of employment contracts which are signed. I do recognize that there could be situations which would require special consideration in termination agreements, but we would expect those to be clearly identified and clearly documented, and a rationale be given as to why there has been a difference between the two agreements.

**CHAIRMAN (Mr. Dent):** Mr. Lafferty.

**MR. LAFFERTY:** Thank you, Mr. Chairman. In your investigation into this, can you tell me who initiated to go into a new agreement with this employee?

**CHAIRMAN (Mr. Dent):** Ms. Fraser.

**MS. FRASER:** Thank you, Mr. Chairman. I cannot be specific as to who initiated the process. There were obviously discussions between the employees concerned and government. Who initiated it, I don't know that, but there were obviously negotiations that were conducted between those employees and the government.

**CHAIRMAN (Mr. Dent):** Thank you. Mr. Roland.

**MR. ROLAND:** Thank you, Mr. Chairman, a couple of more questions. With the new termination agreements, I know you were just asked a question about other companies and governments, but in this government did you have an opportunity to see if this is a practice in this government? When you reviewed this situation, were you given other examples of employee contracts being changed?

**CHAIRMAN (Mr. Dent):** Ms. Fraser.

**MS. FRASER:** Thank you, Mr. Chairman. I believe we looked at seven other situations of termination, and normal practice was to respect the employment contracts which had been signed previously.

**CHAIRMAN (Mr. Dent):** Mr. Roland.

**MR. ROLAND:** Thank you, Mr. Chairman. Earlier you said that in a new termination contract that was put in place there was no reference to deputy minister besides that of pay level. In the employee contract, was there reference to deputy minister?

**CHAIRMAN (Mr. Dent):** Ms. Fraser.

**MS. FRASER:** I will ask Mr. Papineau, he is the one that knows this in great detail.

**CHAIRMAN (Mr. Dent):** Mr. Papineau.

**MR. PAPINEAU:** Mr. Chairman, when we reviewed the employment agreements, it is in the employment agreements where there is reference. There is no reference to deputy minister in Ms. Sorensen's contract other than making reference to certain appendices to the agreement, be it dealing with pay and other clauses, performance pay, but as for in the agreement does it state that she is a deputy minister -- it does not. It specifies that she is not because they are saying that it only applies to the appendices, not to the agreement. In Mr. Bayly's agreement it says that according to this agreement he is a deputy minister. The other thing is that we asked the officials of the government, is Ms. Sorensen a deputy minister, and they have said no she is not a deputy minister.

There is nothing in the termination agreements that talk about being a deputy minister. It is in the employment agreements.

**CHAIRMAN (Mr. Dent):** Thank you, Mr. Papineau. Mr. Roland.

**MR. ROLAND:** Thank you, Mr. Chairman. So in the employment agreement there is reference to the fact that it is a deputy minister position?

**CHAIRMAN (Mr. Dent):** Mr. Papineau.

**MR. PAPINEAU:** In the employment agreement of Ms. Sorensen it does not make her a deputy minister. It specifies that to certain appendices, appendices that are standard in deputy minister clauses, that she is considered a deputy minister dealing with appendices, but not to the agreement which is her appointment. So it very clearly says -- or you can interpret from these agreements that she is not a deputy minister. But then I turned it around and I reconfirmed it with the officials of the government saying, is she a deputy minister, and they said no she is not a deputy minister.

**CHAIRMAN (Mr. Dent):** Ms. Fraser.

**MS. FRASER:** If I might, Mr. Chairman, those appendices referred to pay levels and benefits, not to the position per se.

**CHAIRMAN (Mr. Dent):** Mr. Delorey.

**MR. DELOREY:** Thank you, Mr. Chairman. I just had one question and wondered how you looked at -- in performance bonuses. I have never been a great fan of performance bonuses, and this reaffirms why I am not a great fan of performance bonuses I guess. I think you stated in your report, if I remember correctly, that you found no justification whatsoever as to why they would receive a performance bonus, and at the top level of performance bonuses to boot. I take it that is correct, that is what you found.

Have you had cases to look at in other areas where performance bonuses are paid and what type of criteria is usually used to justify putting out performance bonuses?

**CHAIRMAN (Mr. Dent):** Ms. Fraser.

**MS. FRASER:** Thank you, Mr. Chairman. As auditors we would expect to see documentation and criteria outlining why performance pay was given at a certain level or not. I will obviously admit that that is not always present in all of the departments and agencies that we look at. What was surprising in this case was that there were letters of reprimand on file, and yet the maximum performance pay was paid. In a situation like that, there is obviously a bit of a contradiction -- that there would be letters of reprimand on file and yet maximum performance pay was paid. Again we point out to the Legislature that there was no justification given in the file for the maximum award.

**CHAIRMAN (Mr. Dent):** Just a point of clarification, if there is no justification in the file did the Auditor General staff inquire with government personnel as to why the bonuses would have been paid at the maximum amount if there was nothing on file? Ms. Fraser.

**MS. FRASER:** Thank you, Mr. Chairman. I will let Mr. Papineau respond to that question.

**CHAIRMAN (Mr. Dent):** Okay. Mr. Papineau.

**MR. PAPINEAU:** Yes we did inquire as to the justification for the maximum performance pay, taking into consideration that there were letters of reprimand on the file. We were told that they were given direction to pay maximum performance pay. Further clarification was that they had done a great job, but no specifics as to the objectives that they had met or anything. They had done a great job and therefore they warranted maximum performance pay.

**CHAIRMAN (Mr. Dent):** Was there any indication of who had provided this direction? Mr. Papineau.

**MR. PAPINEAU:** The Premier provided the direction to Liz Snider to pay maximum performance pay.

**CHAIRMAN (Mr. Dent):** In the absence of any documentation, is this a standard approach to government policies and procedures?

**MR. PAPINEAU:** No the policy is very specific. In fact, in the employment agreements it is very specific as to what you must do. You must set out all the objectives that the person must meet within the year. The person must prepare a self assessment. You must prepare an assessment at the end documenting whether or not they met all these objectives, and then you must meet with them and discuss in detail their assessment. At the end of all that, you arrive as to what you are going to pay in performance pay.

**CHAIRMAN (Mr. Dent):** Okay. So based on what you are saying then, I assume that the contracts of employment set out in detail the criteria that had to be met in order to qualify for those bonuses. Is that correct?

**MR. PAPINEAU:** Mr. Chairman, the criteria is different for each individual. The letters of employment just state that you must set out various criteria and objectives that are going to be met during the year. They don't say which ones. It is up to you to prepare them for that specific person's position. The employment agreement is very specific as to how it is to be done.

**CHAIRMAN (Mr. Dent):** Thank you. Mr. McLeod.

**MR. MCLEOD:** Thank you, Mr. Chairman, I just have a couple of questions. The first one is regarding trying to find some rationale for some of the expenditures that were made over and above what was in the termination agreement. I think we have heard that some of it was to avoid legal liability. Is there anything in a termination agreement that spells out with certainty that we would not have to be looking at legal liability down the road?

**CHAIRMAN (Mr. Dent):** Ms. Fraser.

**MS. FRASER:** Thank you, Mr. Chairman. I will ask Mr. Papineau to respond to that question.

**CHAIRMAN (Mr. Dent):** Certainly. Mr. Papineau.

**MR. PAPINEAU:** It is standard in all the termination agreements that we reviewed that there is a clause that once severance is paid the person waives all future claims against the government and all suits against the government. That is a standard clause in employment agreements, and it was in both Ms. Sorensen's agreement and Mr. Bayly's agreement. That is waiving all right to litigation in the future and all claims.

**CHAIRMAN (Mr. Dent):** Mr. McLeod.

**MR. MCLEOD:** So a legal challenge is something we shouldn't have to worry about then. Another thing I want to ask along the same lines about the $250,000 and the $6,000. It is pretty clear on the $6,000 what is was paid out for, but on the $250,000 is there some rationale for this amount being paid because it was based on 17 years employment rather than the actual two years that Ms. Sorensen served as chief of staff?

**CHAIRMAN (Mr. Dent):** Ms. Fraser.

**MS. FRASER:** Thank you, Mr. Chairman. The answer to that is no. If one accepts the argument that the severance should have been based on total years of service, that would have resulted in a maximum payment of 17 months; whereas in fact the payment was 24 months. Even if one accepts that argument, there is still an additional amount that was paid.

**CHAIRMAN (Mr. Dent):** Mr. Braden.

**MR. BRADEN:** Thank you, Mr. Chairman. I would like to go back a few minutes in the information provided by Ms. Fraser. I would like to start with this information about a couple of recent legal opinions where there was some exchange between the government and the AG's office just in the last few days. For clarification, Mr. Chairman, I just want to make sure, did I hear that there was a possibility that there are two different sets of documents under review here? Did the AG's office get one set of documents with one set of clauses, but the government has been dealing with a different set of documents? Is there some concern there that we are not singing from the same sheet here? Thank you.

**CHAIRMAN (Mr. Dent):** Ms. Fraser.

**MS. FRASER:** Thank you, Mr. Chairman. We are concerned about the legal opinions that were given to government because they make reference to two specific clauses as being contained in the agreement with Ms. Sorensen. The copy of the employment agreement that we were provided, that is a signed employment agreement, does not contain those clauses. Now we have not investigated this any further. I don't know if government based an opinion on a standard agreement or some other agreement and didn't look at the specifics of Ms. Sorensen's contract, but the contract that we were given and on which we based our work does not contain the two clauses to which reference is made in the legal opinions.

**CHAIRMAN (Mr. Dent):** Mr. Braden.

**MR. BRADEN:** Thank you, Mr. Chairman. These two clauses, are they significant? If you had had the benefit of them originally, would they have altered or amended any of your assessment? Thank you.

**CHAIRMAN (Mr. Dent):** Ms. Fraser.

**MS. FRASER:** Thank you, Mr. Chairman. Yes they are significant because they refer to the fact that Ms. Sorensen is to be treated as a deputy minister. The clauses that we -- either the clauses are not there or there is a different text in the clause which clearly does not make Ms. Sorensen to be considered as a deputy minister.

**CHAIRMAN (Mr. Dent):** Mr. Braden.

**MR. BRADEN:** Thank you, Mr. Chairman. I will go onto another point of clarification. At one point this morning Ms. Fraser indicated that the Premier was aware that negotiations were underway between Ms. Snider and Ms. Sorensen, and that all seems quite appropriate for the Premier to be aware. While the report is absent of any mention of the Premier's involvement, I wanted to ask Ms. Fraser if she as given to believe at any point that the Premier was involved in the negotiations? I contrast this with what she said about being aware of the negotiations. Thank you.

**CHAIRMAN (Mr. Dent):** Ms. Fraser.

**MS. FRASER:** Thank you, Mr. Chairman. The Premier, of course, signed the termination agreement so to that extent he was of course involved. Beyond that, as to what happened in the negotiations and the discussions I can't answer that. We were informed that he was aware of the negotiations and discussions that were going on, and of course he signed that one termination agreement.

**CHAIRMAN (Mr. Dent):** Mr. Roland.

**MR. ROLAND:** Thank you, Mr. Chairman. A little further on that discrepancy in clauses that you were reviewing, this has been one of the concerns of Members -- trying to get the straight goods -- in a sense the facts on the table so that we can either clear the slate and get on with business or deal with the fact that there has been some - almost you could say covert actions - but as it is laid out here seems to be pretty straightforward. I would have concerns as well that in fact that at that late a stage, October 15th I believe you stated you received some more documentation, that puts a different light on the situation. It has been a long ongoing dispute amongst some Members, me specifically, asking questions about whether this was an executive assistant position or a deputy minister position. It has been pulling teeth without painkillers to get any information on that.

I believe I have seen the section you are referring to, that one portion of the clause they seem to refer to. That is disturbing at this point to find that that is the case.

In response to one question earlier, Mr. Papineau I believe stated that the staff were told to give the maximum performance pay in this negotiation. Can I have that reconfirmed?

**CHAIRMAN (Mr. Dent):** Mr. Papineau.

**MR. PAPINEAU:** Mr. Chairman, to deal with performance pay, as these two individuals were directly employees responsibility to the Premier it would normally be his decision as to what performance pay to pay, as well as discussions with the Secretary to Cabinet. It was normal process, and it is those individuals who would reach the decision as to what to pay. In previous agreements that we looked at, that is exactly how it was done. It was not unusual for the person who these people report to that that person would make the decision as to how much performance pay to make.

Our issue as that there was no documentation in the file, and that documentation as set out in the employment agreements must be used to arrive at performance pay, and we saw no documentation.

**CHAIRMAN (Mr. Dent):** Mr. Roland.

**MR. ROLAND:** Thank you, Mr. Chairman. And that is, I guess, the point I am concerned with. The fact that number one it was unusual to see a new termination agreement being negotiated, but then being told that as part of that new termination agreement you pay maximum performance even though there were letters of reprimand and, politically, we knew what was happening in the House.

Were there other occasions in your discussions with the staff, were there other times they were told? Were they told to enter into these new termination agreements? Were they told to go and negotiate these?

**CHAIRMAN (Mr. Dent):** Ms. Fraser.

**MS. FRASER:** Thank you, Mr. Chairman. I am not sure that I can answer that. Obviously when it was decided to terminate employment there had to some understanding of the terms and conditions around that termination. I would assume that direction was given based on the termination of employment, but that would be a normal process and then of course there would be negotiations and discussions. Beyond that, I'm afraid I cannot give much more clarification.

**CHAIRMAN (Mr. Dent):** Mr. Roland.

**MR. ROLAND:** Thank you, Mr. Chairman. My last question in this area is that normal process of termination or negotiating termination, would be on the employee contract that would already have a termination process set out in it in the normal process, but then to go to a whole new termination agreement that obviously, as the response has shown, removes some certain clauses, that would be very very sense that we are tied to an iron clad contract now that we have to honour, whether it was right or wrong. It seems that some clauses were specifically either removed or I don't believe you could

forget those. I guess that is where I am coming from is on that termination. It is a new termination agreement where they were directed to enter into a new termination agreement because your response seems to reflect that on the existing employee contract there would be this normal process.

**CHAIRMAN (Mr. Dent):** Ms. Fraser.

**MS. FRASER:** Thank you, Mr. Chairman. I do not believe that we are aware of any direction that was given. We were told that these arose through negotiations and discussions after the employment was terminated.

**CHAIRMAN (Mr. Dent):** Mr. Krutko.

**MR. KRUTKO:** Thank you, Mr. Chairman. Following up on some of the questions regarding performance bonuses, you mentioned earlier that there was a process in place that has to be followed to basically do an assessment on the individual with respect to how you pay their bonus. In this case I would like to know, were any questions directed at the Cabinet Secretary asking if there was such a sit-down or did she walk through the evaluation process step by step with Ms. Sorensen?

**CHAIRMAN (Mr. Dent):** Mr. Papineau.

**MR. PAPINEAU:** Thank you, Mr. Chairman. The normal process and the process that is laid out in the employment agreement lays out what has to be undertaken. In this particular case the individuals were not met, there was no documentation in their files that would be used to arrive at their employment agreements and there were letters of reprimand in the files.

**CHAIRMAN (Mr. Dent):** Mr. Krutko.

**MR. KRUTKO:** Thank you, Mr. Chairman. Is that because the direction was given from the Premier to pay top dollars with regard to performance and there was no need for a performance evaluation?

**CHAIRMAN (Mr. Dent):** Mr. Papineau.

**MR. PAPINEAU:** Thank you, Mr. Chairman. I really don't know the reasons and I think I am not at liberty or I am not able to answer that question. I am not the individual that would be privy to that.

**CHAIRMAN (Mr. Dent):** Thank you. Mr. Krutko.

**MR. KRUTKO:** Who is?

**CHAIRMAN (Mr. Dent):** I think, Mr. Krutko, we can find that out. I don't know that that is an appropriate question again either. Mr. Bell.

**MR. BELL:** Thank you. I had some concerns when we originally discussed this in the House about the fact that on one hand the Premier signed one of the termination agreements and not the other, and asked Ms. Snider about this. I think she indicated she felt that she didn't have the authority to sign the one that pertained to Ms. Sorensen because the amounts of termination pay were going over and above the original employment contract. You indicated that it has been done in the past where past Premiers have signed termination contracts. I believe I wrote a letter to the Minister responsible for the Public Service asking that exactly and I don't have the letter with me, but I think he indicated that it had only happened three times in the last 10 years that the Premier stepped in to sign a termination agreement. Did you get the sense that this was a very rare occurrence?

**CHAIRMAN (Mr. Dent):** Ms. Fraser.

**MS. FRASER:** Again I will have to ask Mr. Papineau to respond to that. I don't have the detailed information on that.

**CHAIRMAN (Mr. Dent):** Thank you. Mr. Papineau.

**MR. PAPINEAU:** Thank you, Mr. Chairman. We requested employment agreements and termination agreements of senior officials who had been terminated by the government in the last five years. We were provided with five agreements. We had the two agreements of Mr. Bayly and M. Sorensen and we were provided with five other agreements. We reviewed those agreements and we saw that previous Premiers had signed employment agreements and termination agreements with these other individuals, so it was normal practice that we could see in these agreements.

**CHAIRMAN (Mr. Dent):** Mr. Bell.

**MR. BELL:** Another wrinkle that I think caused Members some concern was that the Premier had stepped in to assume the role of the Minister responsible for the Public Service for certain aspects of this termination I believe. I am wondering if you found any significance to the fact that the Premier had assumed the role of the Minister responsible for the Public Service because I don't believe we heard that there was any paper trail or reference officially to this. It was just something that sort of seemed to happen. Did you come across any of this in your investigation?

**CHAIRMAN (Mr. Dent):** Ms. Fraser.

**MS. FRASER:** Mr. Chairman, all that we can really respond is that we looked at past practice and saw that former Premiers had signed these types of agreements, and so this was not unusual. Of course the Premier has full authority to sign these kinds of agreements.

**CHAIRMAN (Mr. Dent):** Mr. Bell.

**MR. BELL:** Thank you. Just in another area, if we look at the Financial Administration Act there seems to be a requirement that there is due diligence done to ensure that

contracts are valid. I am wondering if there isn't an issue due to the fact that it seems that the termination contract didn't pertain to the original employment contract. Are there not Financial Administration Act issues here? I certainly have concerns.

**CHAIRMAN (Mr. Dent):** Ms. Fraser.

**MS. FRASER:** I think that goes to the heart of our concern, that there was a significant variance between the employment contract and the termination agreement, and there was no justification that we could find for that, or certainly no documentation of that. Now the payments were made according to the termination agreement, which is an agreement between two individuals so I am not sure if the Financial Administration Act would have been broken because it was in accordance with an agreement that was made, and it was a valid agreement. But we are concerned that this is not a prudent manner in which to conduct business, if you will, especially in dealing with public funds.

**CHAIRMAN (Mr. Dent):** Mr. Lafferty.

**MR. LAFFERTY:** Thank you, Mr. Chairman. I am just going to go back to page 12 of appendix C on the report. The original agreement, it says following termination of this agreement for any of the forgoing reasons, no party has any further rights. Now, by going into another agreement, a new agreement, did they not breach this agreement by asking for other rights?

**CHAIRMAN (Mr. Dent):** Ms. Fraser.

**MS. FRASER:** I am sorry, Mr. Chairman, I am not sure that I understand the...this was the employment agreement, which basically says that they can terminate with or without cause, that employment was terminated and a separate agreement was made, specifying how the separation payments would be made. So the termination agreement, in a way, generally would confirm the conditions that are in the employment agreement. It just sort of, if you will, closes the issue.

**CHAIRMAN (Mr. Dent):** I think, Ms. Fraser, if I understood Mr. Lafferty's question, he was asking an opinion as to whether this was standard practice, that on termination, you would replace...the provisions for termination, you would negotiate a new termination benefit when you had an employment contract within the last two years that had been negotiated. Is this standard practice for that sort of change to take place? Ms. Fraser.

**MS. FRASER:** Thank you, Mr. Chairman, for the clarification. No, standard practice would be that the termination agreement would contain the same conditions as the employment agreement, especially given that there are only two years or less between the two agreements. If there were additional amounts paid, or differences, one would expect them to be...the reasons for that to be documented and to be explained.

**CHAIRMAN (Mr. Dent):** Mr. Lafferty.

**MR. LAFFERTY:** So the Auditor General would agree that they have breached the first agreement by changing the clauses in the first agreement?

**CHAIRMAN (Mr. Dent):** Ms. Fraser.

**MS. FRASER:** Yes, that is correct, Mr. Chairman. They did not respect the terms of the first agreement. There was a separate agreement signed. We do not know why that difference occurred. We would expect, given the amounts of money involved, that there would have been justification for that -- written justification in the files.

**CHAIRMAN (Mr. Dent):** Mr. Lafferty.

**MR. LAFFERTY:** Thank you. Also, in the new agreement, there had been certain clauses that .... for all legal costs if we did not fulfil the agreement. Would you say this was put in there to guarantee that this person got that money?

**CHAIRMAN (Mr. Dent):** Ms. Fraser.

**MS. FRASER:** I cannot know what all the rationale was for putting that in. Obviously it gives protection to the employee to assure that the sums of money under that agreement will be paid to her.

**CHAIRMAN (Mr. Dent):** Mr. Braden.

**MR. BRADEN:** Thank you, Mr. Chairman. There is one other aspect that I would like to follow up, to see if Ms. Fraser could give Committee her sense of the issue outlined in observation 18. This is where we delve into this aspect of the government liability and potential litigation by Ms. Sorensen.

Was this aspect of negotiation something that the government or Ms. Snider assumed as kind of a defensive position, kind of a preemptive action and avoiding potential bad news later on? Or was it a defensive reaction to something that Ms. Sorensen, a position Ms. Sorensen may have put on the table?

**CHAIRMAN (Mr. Dent):** Ms. Fraser.

**MS. FRASER:** Thank you, Mr. Chairman. I cannot really qualify how people...explanations that they give to us. This was given to us as an explanation, or partial explanation, as to why higher payments were made. Though as we say, I mean, we were surprised if that was really a concern, one would expect to see legal opinions and some justification of the amount anyway. The only legal opinions, as you know, we received last week after we had begun to discuss the findings of our report.

Anyway, we are reporting what we have been informed. I will leave it up to the Committee to judge that.

**MR. BRADEN:** Thank you. I have no further questions, Mr. Chairman.

**CHAIRMAN (Mr. Dent):** Mr. Delorey.

**MR. DELOREY:** Thank you, Mr. Chairman. I just wanted to go back to the performance bonus for just a moment and get a little further clarification. At what point were the performance bonuses paid in the information you got? Were they paid at a date during the termination contract agreements that were being signed? Or was she paid performance bonus or both before the letters of reprimand were on file, or did you have access to those dates? When the letters of reprimand went out, when the performance bonus went out or, for that matter, had she been paid performance bonuses before that? Did you have that type of information? Thank you, Mr. Chairman.

**CHAIRMAN (Mr. Dent):** Mr. Papineau.

**MR. PAPINEAU:** Thank you, Mr. Chairman. The information that we were provided were the personnel files of the two individuals. In these files were the letters of reprimand. Also, you would expect to find the basis for paying a performance bonus. The performance bonus is paid subsequent to their termination. It is cited in their termination agreements. It was paid in a lump sum payment. I don't know. I mean, I don't know off-hand the exact date, but it was paid subsequent to a few months, subsequent to the date that the termination agreements were signed, and it refers to...a performance bonus is based on performance of the previous year, so it is not for that period, that very moment, but rather the previous fiscal year.

The second issue that you raised was whether or not Ms. Sorensen received previous performance bonus, and she had in her first year as Chief of Staff.

**CHAIRMAN (Mr. Dent):** Mr. Delorey.

**MR. DELOREY:** Thank you, Mr. Chairman. I just wanted another clarification on an issue that Mr. Bell brought up, and that was on documentation that was provided by the government on the termination of senior officials in the past five years. You said you have five extra ones over and above Ms. Sorensen's and Mr. Bayly's termination documents. What was the request from your office? Did you ask for all senior officials in the past five years, or were they just able to pick five and supply you with those five termination documents?

**CHAIRMAN (Mr. Dent):** Mr. Papineau.

**MR. PAPINEAU:** Thank you, Mr. Chairman. We requested all employment files dealing with senior officials terminated in the last five years, and we were provided with five. I was not in any position to know how many senior officials were terminated in the last five years.

**CHAIRMAN (Mr. Dent):** Thank you. Ms. Lee.

**MS. LEE:** Thank you, Mr. Chairman. I just have a short question in addition to questions raised by Mr. Bell and others about the role of the Premier versus the Minister responsible for the public service. I believe that the Auditor General has established that the Premier was involved in this, signed the agreements and it is not out of the norm, but I am just wondering if the Auditor General's Office received any information that

speaks to the fact that the Minister responsible for the public service, which is Mr. Joe Handley, might have been in conflict because he was involved in the Special Committee on Conflict of Interest, which has some relation to this, and that he had to step aside and could not be involved in any of the negotiations in terminating agreements of these two people.

Was there any indication, or did that come up in any of the discussions? Thank you, Mr. Chairman.

**CHAIRMAN (Mr. Dent):** Ms. Fraser.

**MS. FRASER:** Thank you, Mr. Chairman. That was not obviously part of this audit. We looked at the specifics around two termination agreements that...Mr. Papineau is indicating tc me that did not come up as part of our audit.

**CHAIRMAN (Mr. Dent):** Thank you. Ms. Fraser, we have been told that it is not unusual for the Premier to sign, and that previous Premiers have signed these kinds of agreements. Members though, as Mr. Bell pointed out, were told that one was signed by Ms. Snider and the other signed by the Premier. Ms. Snider indicated to Members that she felt it was outside her mandate to sign one of them. Did your staff inquire with Ms. Snider as to why she signed one and the Premier signed the other?

**MS. FRASER:** Yes, Mr. Chairman, and we were given essentially the same explanation.

**CHAIRMAN (Mr. Dent):** Mr. Bell.

**MR. BELL:** Just a couple more quick questions. When calculating severance pay, the government I think is countering that the GNWT intended to pay Ms. Sorensen severance pay, all of it, at the chief of staff level. They said they intended that when they entered into the agreement. They also intended to count years of service with the entire government, not just the years as chief of staff, and that this would be at a 12-month minimum, as we have seen in the contract.

It seems to me that is really the same thing as offering a signing bonus, because it seems that amount of payment is triggered just by the fact that you sign onto the contract, because we know that when you are released, we are now intending to give you this amount of money at the chief of staff level and for the years you were with the entire government. Is that not really the same thing as a signing bonus?

**CHAIRMAN (Mr. Dent):** Ms. Fraser.

**MS. FRASER:** Thank you, Mr. Chairman. I am not sure if it is a signing bonus. Obviously, it takes into account the fact that the person has moved to a higher position, if you will. Even giving 12 months severance was more severance than Ms. Sorensen would have received for 15 years of service in her previous position, which would have been about 35 weeks. So even the minimum severance was already, if you will, an increase to what she would have received.

As we mention in the report, even if the government had wanted to give one month's severance for each year of service, that would only have justified 17 months and there were 24 months paid, so there was still a lack of justification, if you will, for the additional seven months.

**CHAIRMAN (Mr. Dent):** Mr. Bell.

**MR. BELL:** Thank you. I was just trying to sort of see if I couldn't understand the government's rationale in signing the original contract, which obviously, you cannot help with and cannot provide those answers.

There is one other section that I am curious about. Observations 13 and 16, it seems, just as a matter of course, you indicate that Bayly stopped working at such-and-such date, and Sorensen stopped working at such-and-such date, after the two week extension. You then make it very clear that Sorensen has provided no services to the government since then, and Bayly has provided no services to the government since then. Is that something that you received in writing because you asked? Is this just something that they indicated to you in passing? I am wondering how you know that they had not provided any services to the government since then?

**CHAIRMAN (Mr. Dent):** Ms. Fraser.

**MS. FRASER:** Thank you, Mr. Chairman. No, we asked government officials and they indicated to us that these two people had not provided any services since that time.

**CHAIRMAN (Mr. Dent):** Mr. Roland.

**MR. ROLAND:** Thank you, Mr. Chairman. Further to some of the questions around appendix C in the report, there was much discussion. I am sure you had a chance to review the debate that happened in the House around the funding that was questioned. Again, a lot of the argument given was the potential legal implications of any things that would happen -- confidentiality, a whole lot of those issues why they could not come forward with information that was being requested. Many of us had the understanding that is clearly pointed out in appendix C, 4.3 of the termination section of the agreement. It basically says that you have no further rights after this has been terminated. And in 4.1(c), termination can come without notice and for cause.

So it seemed to be fairly straightforward that we were protected by the government by this agreement. We were protected if we decided that, for whatever reason on a particular day, that person was no longer going to be employed by the Government of the Northwest Territories, and we were covered in all circumstances, and that is why the 12-month provision. You could be there for two weeks and get 12 months provision, if it was felt that services were not being rendered or whatever.

But the new termination agreement, as you have pointed out, and they do not have substantiation for, clearly removes that section. Is that accurate?

**CHAIRMAN (Mr. Dent):** Ms. Fraser.

**MS. FRASER:** Mr. Chairman, I will have to just verify. I do not believe that the new termination agreement removes these sections. What it does though is include an additional paragraph indicating that should Ms. Sorensen have to take legal action to get the amounts owing to her under that agreement, that the costs would be borne by the government.

**CHAIRMAN (Mr. Dent):** Mr. Roland.

**MR. ROLAND:** Thank you, Mr. Chairman. Thank you for that clarification. One other point that I would like to get some clarification on is that you have talked about the payment that she has received, in excess of what was originally paid out, is about $250,000, but in page 6 of your report, paragraph 20, which continues to the top of page 7, you talk about the pension issue of extension and including all her pensionable time at the deputy minister pay level. If you look at the present value of 25 years of that pension, it would include and equal to another $230,000. So that $230,000 pension value over a 25-year period is separate from the $250,000 that has been agreed to in the termination clause?

**CHAIRMAN (Mr. Dent):** Ms. Fraser.

**MS. FRASER:** That is correct, Mr. Chairman. That is an additional amount. Obviously, the pension benefits are higher because of the continuation of the employment and the way the pension is calculated. So the pension is higher than it would have been otherwise.

**CHAIRMAN (Mr. Dent):** Mr. Krutko.

**MR. KRUTKO:** Thank you, Mr. Chairman. Mr. Chairman, another area that has shown up is the area of removal assistance of $6,000. Under the government handbook, it says to qualify, you have to be employed. The employee must move to a community or residence within 30 days, must submit receipts on their removal costs. I would like to know, were there any receipts filed from the government, stating that they did fulfill that obligation?

**CHAIRMAN (Mr. Dent):** Ms. Fraser.

**MS. FRASER:** Mr. Chairman, there were no receipts filed. I would point out though that this is...I do not know if I should say usual practice, but we have seen in the past where this relocation allowance was given, even though all of the conditions might not have been satisfied.

**CHAIRMAN (Mr. Dent):** Mr. Krutko.

**MR. KRUTKO:** Can the Auditor General state how many such activities have taken place in the past, so we have a rough number?

**CHAIRMAN (Mr. Dent):** Ms. Fraser.

**MS. FRASER:** Thank you, Mr. Chairman. In the five other contracts that we looked at, the relocation allowance was there. Now, we did not go from that to verify if the person had moved and all the rest of it, but it would seem, in our discussions with senior officials, they indicated that it was sort of common practice to give this relocation allowance to people who were terminated.

**CHAIRMAN (Mr. Dent):** Mr. Krutko.

**MR. KRUTKO:** Thank you, Mr. Chairman. Also under the GNWT Manager's Handbook, it also states that an employee must have three years of service within the government of the Northwest Territories. I am just wondering if they also met that criteria.

**CHAIRMAN (Mr. Dent):** Ms. Fraser.

**MS. FRASER:** I can perhaps ask Mr. Papineau to clarify that question.

**CHAIRMAN (Mr. Dent):** Mr. Papineau.

**MR. PAPINEAU:** Thank you, Mr. Chairman. In respect to Mr. Bayly, he only had two years of service, but then they extended his severance over another year, so there is a question as to whether or not he met the minimum requirements of two years for that.

As for Ms. Sorensen, she had sufficient years to meet the minimum employment years for the relocation payment.

**CHAIRMAN (Mr. Dent):** Thank you. Mr. Lafferty.

**MR. LAFFERTY:** Thank you, Mr. Chairman. I will just finish my questioning that I started earlier and was not allowed to do.

This new termination package that was negotiated because of no legal documents available, would you say that whoever negotiated the severance package and signed, knowingly did this with the knowledge that this was not in the best interest of the government, and that they knew what was going to happen if this was ever found out, did it anyway? Because they felt like they could do it and get away with it.

**CHAIRMAN (Mr. Dent):** Ms. Fraser.

**MS. FRASER:** Mr. Chairman, I am only a humble auditor. I cannot know what people do or do not do or why they do it, so I think that question would have to go to the person who it concerns, not me.

**CHAIRMAN (Mr. Dent):** Mr. Lafferty.

**MR. LAFFERTY:** But the Auditor General will agree that this was negotiated and signed and it was not in the best interest of this government? You would agree to that?

**CHAIRMAN (Mr. Dent):** Ms. Fraser.

**MS. FRASER:** Mr. Chairman, I cannot state that. What I can say is there was an agreement that was made that did not follow the conditions of a previous agreement. We found no rationale for it, and we do not know why those additional amounts were paid, and we do not believe the government acted reasonably nor prudently in doing so.

Now, were there other reasons for which we were unaware? I do not know.

**CHAIRMAN (Mr. Dent):** Mr. Delorey.

**MR. DELOREY:** Thank you, Mr. Chairman. I just wanted to touch on item 29 in your conclusions. It states there that employment agreements are intended to ensure that all parties understand their rights and obligations and they are used to...in your opinion, I mean, your findings in your report are very conclusive and very clear. Was there anything in those employment contracts that in your opinion could have led to any confusion as to what the pay benefits should have been, whatever? Could they have been followed right to the letter of the law, those employment agreements with pay benefits without any fear of legal action or repercussions coming from it?

**CHAIRMAN (Mr. Dent):** Ms. Fraser.

**MS. FRASER:** Thank you, Mr. Chairman. We found the employment contracts were clear. They had been used -- this is a standard contract -- they had been used in the past for many senior officials in government. The termination agreements, which had been concluded in the past, respected those employment agreements. So I would say that the employment agreements were fine.

**CHAIRMAN (Mr. Dent):** Mr. Roland.

**MR. ROLAND:** Thank you, Mr. Chairman. A question earlier in the area of the Premier signing off on termination agreements and there were past Premiers who have done that, did you have information that would state that those were new termination agreements that were negotiated, or were they part of a regular employee contract that had a termination clause in it?

**CHAIRMAN (Mr. Dent):** Ms. Fraser.

**MS. FRASER:** Thank you, Mr. Chairman. It was standard practice to include a termination agreement, but generally, those termination agreements respected the terms and conditions of the employment agreement.

**CHAIRMAN (Mr. Dent):** Ms. Fraser, was it usual practice in any of those termination agreements to extend employment through the termination period? Ms. Fraser.

**MS. FRASER:** Mr. Chairman, as we have mentioned, there is a policy that was adopted in 1999, so for deputy ministers that is permissible to extend employment. I believe it did occur in some of those other termination agreements, but that was acceptable practice, given the 1999 policy.

**CHAIRMAN (Mr. Dent):** Have you had experience in other jurisdictions? Could you tell us if this is standard practice in other jurisdictions? Ms. Fraser.

**MS. FRASER:** Thank you, Mr. Chairman. I cannot talk, obviously, for a lot of other jurisdictions. I can only talk, if you will, of our own situation. I know under federal government policy, employment can be extended for a fairly short period of time, a few months, but generally is not extended, to my knowledge, for a significant period of time.

**CHAIRMAN (Mr. Dent):** Thank you. Mr. Krutko.

**MR. KRUTKO:** Can the Auditor General tell us exactly who was interviewed during the process of doing your audit? Basically, who those individuals were?

**CHAIRMAN (Mr. Dent):** Ms. Fraser.

**MS. FRASER:** Thank you, Mr. Chairman. Generally, we would like to keep our audit process confidential to us, but I will certainly indicate that we did interview the two former employees. We met with the chief of staff. We met with the Premier. We met with the Secretary to Cabinet and many other senior officials of government. If there were specific people, I would be glad to answer that.

**CHAIRMAN (Mr. Dent):** Mr. Krutko.

**MR. KRUTKO:** Can you tell us the list of the other senior employees of government? Since they are government employees. This is a government audit and I think that we should have nothing to hide here, so who are the government employees?

**CHAIRMAN (Mr. Dent):** Ms. Fraser.

**MS. FRASER:** Mr. Chairman, I hope you appreciate, this is not normal practice for us to disclose who we talked to during an audit, but given that we are in committee, I will ask Mr. Papineau to tell you the names of all the people we met.

**CHAIRMAN (Mr. Dent):** Mr. Papineau.

**MR. PAPINEAU:** The individuals that we met during our audit were Stephen Kakfwi, the Premier; Elizabeth Snider, Secretary to Cabinet; Lew Voytilla, the Comptroller General; Carl Bird, Director of Corporate Services, Executive branch; Richard Robertson, Manager, Financial Services, Executive branch; Terry Pierce, Director, Budgeting and Evaluation; Sylvia Haener, Director, Labour Relations and Compensation Services; Shaleen Woodward, Manager, Labour Relations; Rita Brown, Benefits Specialist; and Karan Shaner, Legal Counsel.

**CHAIRMAN (Mr. Dent):** Thank you. Mr. Krutko.

**MR. KRUTKO:** At any time, did you speak to the Minister of Finance, Mr. Handley, on this matter?

**CHAIRMAN (Mr. Dent):** Mr. Papineau.

**MR. PAPINEAU:** Mr. Chairman, no we did not.

**CHAIRMAN (Mr. Dent):** Mr. Bell.

**MR. BELL:** Just a follow-up question to that. I am just wondering, you indicated, I think two people from labour relations, one person from benefits, one benefits specialist. Also, Karan Shaner, who provides legal advice, I believe, to this government in some capacity.

I am wondering if any of those people indicated to you that they had advised Ms. Snider or the Premier that we had serious legal liability here and we should try to compensate over and above the terms of the contract for that?

**CHAIRMAN (Mr. Dent):** Ms. Fraser.

**MS. FRASER:** Mr. Chairman, you can appreciate, our audits are confidential to us. It would be totally inappropriate for us to indicate to the Members, with all due respect, the audit procedures and the findings of our audit working with individual people.

**CHAIRMAN (Mr. Dent):** Mr. Bell.

**MR. BELL:** Thank you, and I can appreciate that. Just one more question. I am wondering, is this the only GNWT termination contract that you have seen or heard of that seems to not respect the terms of the employment contract it should be related to. Does this seem to be the only incident you have uncovered?

**CHAIRMAN (Mr. Dent):** Ms. Fraser.

**MS. FRASER:** Yes, Mr. Chairman. Of the seven that we looked at, it would appear that this is the only one that has such a significant difference.

**CHAIRMAN (Mr. Dent):** Mr. Nitah.

**MR. NITAH:** Thank you, Mr. Chairman. Mr. Chairman, in the Auditor General's final comments, on item 30, she indicates that government did not handle the matter reasonably and with prudence. Based on our discussions and some questions by Mr. Krutko, it seems that this matter is isolated to the Premier's office only and does not involve Cabinet as a whole. Was Cabinet as a whole involved in this whole process, or were they aware of this process as it was unfolding? Thank you, Mr. Chairman.

**CHAIRMAN (Mr. Dent):** I think, Mr. Nitah, you have it pretty clearly in the Auditor General's report that they looked at where this came from, so Cabinet itself was not mentioned as any of the people that were involved in the interviews either, so I am not sure. Ms. Fraser, do you care to address that question?

**MS. FRASER:** Thank you, Mr. Chairman. That question is really outside the scope of the audit. We looked at those two specific agreements and the processes and the approvals around those two agreements. As to who knew about what we did not deal with in this audit.

**CHAIRMAN (Mr. Dent):** Ms. Fraser, if I could go back to the issue of Ms. Snider signing one contract and not the other, she said in the House that the reason for that was that one was within the delegated authority that she had and the other was not. You have indicated that was basically what she confirmed to your staff when they questioned her on this issue.

I guess specifically, did your staff ask her if she had concerns with one of the contracts? And if so, had she communicated those concerns to anybody?

**MS. FRASER:** We did ask that question of Ms. Snider, but she did indicate to us that she felt that the agreements were appropriate.

**CHAIRMAN (Mr. Dent):** Thank you. I have one other question. You have made note of the unusual clause in Ms. Sorensen's agreement about legal costs. I take it from your comment that you have not seen this before. Is that the case? Have you ever seen this sort of clause in any other employment or termination contract, where the employer would be responsible for all legal costs to enforce? Ms. Fraser.

**MS. FRASER:** Mr. Chairman, we did not see it in the other employment termination contracts here in the Northwest Territories. I must admit I have seen similar clauses like that, but in more of, if you will, contentious agreements in the private sector. I have not seen that kind of agreement in the public sector.

**CHAIRMAN (Mr. Dent):** Thank you. Are there anymore questions from Committee for Ms. Fraser or her staff? Seeing none, Ms. Fraser, I would like to thank you very much for your time and attendance. We appreciate very much that your office undertook this audit on behalf of the Assembly and we appreciate that you took the time to come and present it to us personally and respond to our questions. I think it has been very, very helpful and useful, and we have enjoyed meeting you. It is unfortunate that you did not get a chance to see the Northern Lights on your visit here, but we hope that you will come back some time and be able to take those in. Thank you.

**MS. FRASER:** Thank you, Mr. Chairman. I do appreciate having had the opportunity to meet with the Members. I look forward to future visits. Maybe next time there will not be any snow.

-- Laughter

**CHAIRMAN (Mr. Dent):** Thank you. The public portion of the Committee will recess now. Committee will resume its consideration in-camera in ten minutes.

-- ADJOURNMENT

# APPENDIX B-1

**Minority Report from**
**Bill Braden, Member for Great Slave**

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I wish to indicate my support for the Accountability and Oversight's Committee recommendation that the Legislative Assembly accept the report. I believe Sheila Fraser, Auditor General of Canada and her staff did a thorough and professional job of completing the mandate given her by the Assembly last March.

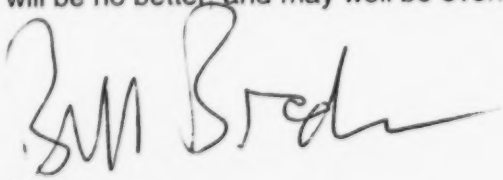
I was, like many others, dismayed with the number of unjustified variances in the compensation packages. And I was equally dismayed with the indications of the Premier's wholly inappropriate involvement in the event.

However, I wish to indicate my disapproval of the Committee recommendation that Mr. Kakfwi resign.

I believe that his departure, as much as it might be warranted by his involvement in the termination fracas, would do the Northwest Territories more harm than good on much broader and more consequential issues at this time. Agendas relating to devolution, pipeline and diamond development, provincial and external relations, and self-government, have advanced considerably through his leadership.

This is a difficult compromise for me to make at this relatively late point in our four-year mandate as the 14th Legislative Assembly.

I have asked what I believe is a crucial question: what will our situation be, as the Northwest Territories, when our mandate ends in October of 2003? I believe it will be no better, and may well be even less certain, with a replacement leader.



Bill Braden
MLA Great Slave

# APPENDIX B-2

**Minority Report from**
**Sandy Lee, Member for Range Lake**

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Having read the majority report and considered all of the information coming out of the committee proceedings, I must respectfully disagree with the majority report. My concerns are with regard to both procedural and substantive issues.

Procedural Issues:

The Auditor General's Report (the Report) was tabled in the House on October 23, 2002. While we have had the opportunity to review the report and to meet with the Auditor General (the AG) and her officials who have given us more details about the findings of the report, we have not had the opportunity to hear "the other side" of the story.

I believe this is important since there are some significant differences between the position of the GNWT and the AG's finding of facts, the circumstances surrounding the facts and the interpretation of those facts and circumstances.

Without that process, I do not feel I would be exercising the level of prudence and caution I believe is required to arrive at a conclusion as serious as the one presented by the majority report.

Substantive Issues:

Based on my review of the Report, and having heard the testimony of the AG and her officials, I continue to have questions and concerns about some of the findings, the circumstances surrounding the facts established, and the interpretation of these findings.

I wish to explain my position by paragraph as follows.

**First Paragraph:** I do not disagree with this paragraph of the majority report.

**Second Paragraph:** I do not disagree with this paragraph of the majority report for obvious reasons.

**Third Paragraph of the Majority Report which reads as follows:**

> Members requested this special audit in March of this year because *they were not satisfied that all the information surrounding the circumstances of the termination agreements of the former Principal Secretary to Cabinet and Chief of Staff was being made available to them.* (emphasis added).

While I respect this position of the majority, I disagree with it on three grounds. This is based on the same rationale that I expressed when I spoke and voted on the motion in the House last March. (Hansard pg. 536, March 11, 2002 and pg. 575, March 12, 2002):

1. From the information given by the officials who were called in as witnesses during the Committee of the Whole debate, I had no reason to question their claim that the accepted and normal practice and procedure were followed with regards to the negotiation of these separation agreements;

2. More importantly, given that we were cautioned repeatedly by the Minister Responsible for Public Service, Hon. Joe Handley, that the government had a contractual obligation to respect the confidentiality provision of the separation agreements question, I felt that as a legislator, I must respect that obligation as well;

3. I was also made aware, by the same Minister, of the obligation I had under our own privacy legislation. I accept that we had varied advice and opinions on this legal question. However, as an elected official, it was my prerogative to make a judgement, and I chose to honour this obligation. And I believed there was a real potential that the privacy rights of these employees in question could be placed in jeopardy, not necessarily by the audit process, but by the public discussions of the findings.

**Fourth paragraph of the Majority Report which reads as follows:**

> The Committee has considered the Report, and met with the Auditor General to discuss it further in a public meeting on October 24, 2002. The transcript from that meeting is attached as an appendix to this report. The Committee agrees with the Auditor General's findings. The audit has confirmed that the terms of the separation agreements were without justification. The staff of Auditor General have confirmed that those terms were set in place at the direction of the Premier.

I disagree with this paragraph in some of its essential parts. I feel it is important for me to explain as much as I can here.

1. I do not agree with the majority position that "The Committee agrees with the findings of the Auditor General".

I believe, based on the information coming out of the committee proceedings, there are some important differences about the facts and findings. For example, in her opening statement to the Committee, the AG stated that:

> The termination agreement between the GNWT and Sorensen states that Sorensen tenders her resignation in two years, on January 4, 2004. This agreement effectively continues Sorensen's status as an employee of the GNWT for two more years, to January 2004. During this two-year period, the government will continue to pay Sorensen her current salary and full employee benefits. This is not permitted under the GNWT 1999 policy or any other policy of the GNWT; Sorensen as a management employee did not meet the requirements of the policy; that is, *she was not laid off*, nor was she terminated for health reasons (emphasis added).

In other words, had Sorensen been "laid off" her extended benefits would have been within the government policy. So the question of whether or not she was laid off or terminated is a key part of the Report.

When asked about this, the AG responded that (I must caution that this is based on my best recollection of the discussion as at the time of the writing of this report, we do not have the benefit of the transcript due to the time constraint), her office was told by the GNWT officials that the position was eliminated by a cabinet decision. However, the AG was concerned that there was no documentation, specifically a ROD (Record of Decision) of Cabinet.

In the same discussion, the AG also responded that her office received a letter from the GNWT stating that the position was eliminated. However, the AG finds this is not an acceptable documentation and therefore concludes that Sorensen was terminated not laid-off. I respect the conclusion the AG office must draw, based on its own policy and guideline.

What I do know is that, the Premier made a statement in the House on October 29, 2001, that the Chief of Staff position was eliminated and that he was negotiating an agreement with Ms. Sorensen for a separate position as a personal assistant.

Further during the committee's discussion with the AG, the Committee Chair, Mr. Charles Dent confirmed that the committee has a letter on file dated back in March, from the Minister Responsible for Public Services confirming that Sorensen's position was in fact eliminated on October 29, 2001.

Again, I respect the requirement to have proper documentation. However, based on the additional information I received as a Committee member, including public statements and correspondence to the committee, I do believe there is information to reasonably conclude that the position of Chief of Staff was in fact eliminated and that Sorensen was effectively laid-off. In legal terms, she was constructively dismissed. I believe I have the duty to take that into consideration and exercise my prerogative to draw my own conclusion on that basis.

At the least, there is an important difference of opinion on the most crucial issue as to whether or not Sorensen was terminated or laid off. This is important because it goes to the heart of the Report's findings. For this reason, I cannot agree with majority position in this regard.

2. The third paragraph includes a statement that "the audit has confirmed that the terms of the termination agreements were without justification". I am not clear on exactly which terms are thought to be without justification. However, based on my understanding of the discussion of the Report I want to comment on some of the items that might have been considered to be "without justification".

One of the concerns is the AG's finding on paragraph 23 of the Report which speaks to the "unusual" part of the agreement. It reads,

> "Unique to all the termination agreement stating that if the GNWT failed to perform all of its obligations under the agreement, it would be required to pay all of Sorensen's legal costs associated with enforcement of the agreement".

When asked about this provision, the AG stated (and I am stating here based on what I recall, as due to the time constraint, I do not have the benefit of the transcript), that she has seen these provisions before in private sector but not in public sector. I learn from this that this has been done elsewhere.

It was my understanding that parties can enter into an agreement about provisions like this or any other. I have no reason to question this was what the two parties agreed to under the circumstances at the time. I do not see this as something that questions the validity of this agreement, or in violation of negotiation process or something highly unusual.

3. I want to make a comment on the AG's finding that "extra payments" were made to Sorensen. When asked about whether or not there were extenuating circumstances that might have led the GNWT to believe that they faced a potential legal liability and whether or not that might have justified the "extra payments". The AG responded that they were not able to provide a legal opinion but that they could find any documentation to justify that.

   I agree that expenditure of the public money must be well documented and accounted for. And it is perhaps true that the government officials could have better documented the circumstances and situations surrounding these negotiations. At the same time, I believe there is ample information in the public arena to support that it is reasonable for the government to conclude there was, or at a minimum, to be concerned about potential legal liability arising from the termination or dismissal of these employees. I agree that no one could know for sure since that is the whole point of these agreements, to settle by means other than going to court. But lack of documentation does not say that there were no extenuating circumstances

4. I do not agree with this part of the paragraph in so far as a role the Premier played in these separation agreements. I do not believe there are sufficient facts to establish that the Premier was involved in the negotiations directly. In fact, it was stated by the AG, on more than one occasion that the Premier has the power to sign these separation agreements and that in all other agreements they reviewed, they were also signed by Premier of the day. The AG also stated that she had no information or reason to conclude that the Premier was directly involved in these negotiations in any way.

**Fifth paragraph of the majority report, which reads**:

> The Committee recommends the Legislative Assembly accept the Auditor General's conclusion that the Government did not handle the matter reasonably and with prudence.

I agree that the government did not act prudently in terms of the way decisions were documented. Surely, it could have been done better. But in my opinion, where there was a lack of formal documentation the AG was specifically looking for, we have other information, either by the statements made in the House or in the media, to notify or "document" these decisions. I have no reason to doubt the sincerity of this information. Based on all of the information I have, in addition to the AG report, I have no reason to believe the way the Government handled it was unreasonable.

**Sixth paragraph:**

> The Committee further recommends that in light of its findings, the *Premier* submit his resignation forthwith as Premier and member of the Executive Council.

For the reasons set out above, I do not agree with this recommendation but I do respect that this will be put to the House and I will have the opportunity to explain my position in that forum.

At the same time, what I would recommend is that policy and procedure should be put in place to ensure that better documentation is in place to indicate incremental decisions made by the government and the circumstances that lead to those decisions.

Sandy Lee
MLA, Range Lake

# APPENDIX C

No. 13-14(5)

Northwest Territories Legislative Assembly

# Motion

**Referral of Tabled Document 64-14(5) "Report to the Legislative Assembly of the Northwest Territories on Termination Compensation to Two Senior Officials" by the Auditor General of Canada to the Standing Committee on Accountability and Oversight**

WHEREAS the Legislative Assembly by Motion 7-14(5) had requested the Auditor General of Canada to undertake a Special Audit.

AND WHEREAS the Auditor General of Canada had agreed to undertake a Special Audit;

AND WHEREAS the Report of the Special Audit has been tabled in the Legislative Assembly:

NOW THEREFORE I MOVE, seconded by the Honorable Member for Tu Nedhe, that Tabled Document 64-14(5) entitled "Report to the Legislative Assembly of the Northwest Territories on Termination Compensation to Two Senior Officials" by the Auditor General of Canada be referred to the Standing Committee on Accountability and Oversight;

AND FURTHER that the Standing Committee on Accountability and Oversight is instructed to meet with the Auditor General of Canada on October 24, 2002;

AND FURTHERMORE that the Standing Committee on Accountability and Oversight undertake consideration of the Report with due diligence and provide a report to the Legislative Assembly as soon as practicable.

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|---|---|---|---|
| Date of Notice: | October 23, 2002 | Moved by: | Mr. Braden |
| Date of Introduction: | October 23, 2002 | Seconded by: | Mr. Nitah |
| Disposition: | Carried | | |
| Carried: | October 23, 2002 | Ruled Out of Order: | |